

IN THE SENATE OF THE UNITED STATES.

JANUARY 26, 1858.—Ordered to be printed.

Mr. POLK made the following adverse

REPORT.

[To accompany Bill S. C. C. 93.]

The Committee of Claims, having had under consideration the claim of Nahum Ward, report as follows:

This claim is for payment of forty-three loan office certificates, purporting to have been issued under a resolution of Congress of the 22d February, 1777. Each of the certificates is for \$400, and dated the 23d December, 1777, payable on the 1st of December, 1781, with interest annually at the rate of 6 per cent. per annum, signed Samuel Hillegas. On each of them is the following:

“Countersigned by order of S. A. Trustlin, esq., governor of Georgia.

“E. DAVIS, JR.”

On twenty-nine of these certificates is the following endorsement:

“Four years’ interest to December 23, 1781, paid in bills of exchange.

“M. HILLEGAS, *Continental Treasurer.*”

The committee find that M. Hillegas was at the above dates continental treasurer, and that Samuel Hillegas was authorized by the resolution of Congress to sign the certificates. They, therefore, have no reason to question the genuineness of the body of the certificates themselves, nor of the endorsement of the payment of four years’ interest to the 23d December, 1783.

But by a resolution of Congress of the 3d of October, 1776, a loan office was established in each of the United States, and a commissioner was to be appointed by the said States to superintend the office; and also that each certificate sent to the respective loan offices by the Treasurer of the United States should be countersigned by the commissioner to whom they should be sent.

The countersigning of the certificates by the commissioner was therefore indispensable in order to give them effect; and these certificates sent to Georgia were of no validity until they were countersigned by the commissioner.

The countersigning is by "E. Davis, jr." This E. Davis, jr., does not claim to have acted as commissioner, and there is no proof offered to show that he ever was really such commissioner.

The countersigning, it is true, purports to have been done by order of J. A. Trustlin, governor of Georgia. But the resolution of the continental Congress requires the commissioner to be appointed by the States, and not by the governors. And there is no act of the legislature of Georgia produced to show that the governor was authorized to appoint a commissioner, nor is there any evidence that Governor Trustlin ever appointed said Davis commissioner.

The committee, therefore, find themselves constrained to the opinion that these certificates are not countersigned by the loan office commissioner of the State of Georgia, and that, so far as the United States are concerned, they are consequently absolutely void.

The committee also beg leave to say that there is not a particle of evidence that the United States ever received any value for the certificates. If there had been proof that the United States had received any value for them, the committee would have unhesitatingly recommended the refunding that value to the party legally entitled to it.

Your committee do not think that payment of interest on twenty-nine of the certificates imposes on the United States the obligation of paying the principal of them. If void before the payment of the interest, that fact cannot make them valid. Suppose they had been forged, or that the endorsed countersigning on them had been forged, it would hardly be contended that the payment of the interest on them then would of itself have imposed on the United States the obligation to pay them. If paid under these circumstances by the Treasurer, he would have been obliged himself to stand the loss; and the same, your committee submit, would have been the consequence if he paid these certificates on the proof appearing in this case.

The resolution of Congress, on the subject of these loan office certificates, required that the certificates sent to the commissioners of the States "should be indented, and the checks kept in the commissioner's office;" that the commissioner "should keep books, in which regular entries should be made of the sums borrowed, and the time when, and the names of the persons by whom, the said sums were lent;" that he "should transmit to the continental treasurer, once a month, an account of cash in his office, and answer all drafts of the Treasurer to the amount of the cash which he should at any time have in his hand."

Your committee think that, if these certificates were really countersigned by any commissioner for the State of Georgia, who had complied with his duty in regard to them, as defined in the foregoing resolution, it would have been an easy matter to have shown the fact of such countersigning; yet such fact is not shown, nor is there even an attempt to produce the proof required by the resolution.

The committee state that this case has been before the Court of Claims, and two of the judges, Judge Gilchrist delivering the opinion of the majority of the judges, decided in favor of the claim, while Judge Blackford dissented, and delivered a dissenting opinion.

But the claim had, before then, been several times presented to the

Treasury, and always disallowed. First, in 1791 ; then again in 1792, when it was examined by Alexander Hamilton, and again disallowed. And still again in 1795, the report of the Secretary of the Treasury examines these certificates and decides against them. And yet again, in 1816, Mr. Dallas, Secretary of the Treasury, reported to the chairman of a committee of the House of Representatives against the payment of these certificates. And finally, they were once more reported against from the Treasury Department in 1852.

It may also be added, that the payment of these certificates seems to have been reported against in the House in 1826, and also in the Senate in 1836, and again in 1844. But during the last Congress the Committee of Claims of the Senate reported favorably to the claim, and also reported the bill that had been reported to that committee by the Court of Claims.

Your committee append hereto the opinion of the Court of Claims, and the dissenting opinion of Judge Blackford. But after full consideration of the claim, they feel themselves constrained to report against its allowance.

